IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

CRL.A.No. 144 of 2004(C)

SC.119/2000 of SESSIONS COURT, THRISSUR
CP.18/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR
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APPELLANT: ACCUSED:

BABU, C.NO.2524,
VIYYUR CENTRAL PRISON, VIYYUR, THRISSUR.

BY ADV. SHAHANA KARTHIKEYAN (STATE BRIEF)

RESPONDENT:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

Crl.A.No.144 OF 2004

Dated 1st February, 2007

JUDGMENT

Koshy,J.

Appellant/accused was found guilty for offences punishable under Sections 302 and 307 of the Indian Penal Code by the Sessions Judge, Thrissur. The prosecution case is that on 29.3.1998, Sunday, at night, PW1 Baby and his friend Rajesh proceeded from Thrissur West Fort in an autorickshaw towards Pullazhi, their native place. On the way, the accused got embarked in the autorickshaw. But, immediately, the accused created some noise and picked up quarrel. So, he was pushed out of the autorickshaw and the two proceeded to Pullazhi. On reaching Pullazhi, they joined their friends who were spending their evening by singing songs at the bunk shop in front of Kerala Lakshmi Mill. While they were engaged in the musical concert, the accused reached there and remained for some time staring at each of them in the group and then left the place. After some time, he returned and with some exhortation stabbed at the neck of PW1 Baby with a knife. Sustaining the injury, PW1 cried aloud and sat down on the ground. Then Rajesh intervened asking the accused what he was doing. Then with some exhortation the accused pushed him down and stabbed at his plank. He sustained bleeding injury. Both the injured

were taken to the Medical College Hospital, Thrissur in two different autorickshaws. There they were attended by the doctor. On getting some information, the Sub Inspector of Police, Thrissur Town West reached the Medical College Hospital during that night itself and recorded the statement of Rajesh and on the basis of that registered crime case No.103/98. Rajesh succumbed to the abdominal injury in that night and on the next day Baby was got referred and admitted in Heart Hospital and treated there for about two months as inpatient for the injury on the trachea.

2. On 29.3.98 at 10.50. p.m. PW5, the Sub Inspector of Police, Thrissur West Police Station reached the Medical College Hospital and recorded the statement of Rajesh, read over to him and got it signed by him and it is his statement (Ext.P3) basing on which Ext.P5 F.I.R was prepared in Crime No.103/98. So, the F.I. Statement was given by the deceased himself. The F.I. Statement was given at 10.50 p.m. on 29.3.1998 and he died in the early morning on 30.3.1998 and at 8.30 a.m. on the same day inquest was conducted. Ext.P3 F.I. Statement is in tune with the prosecution case. But, he was not able to be cross examined because of his death. Statement in Ext.P3

regarding the cause of death can be taken as dying declaration in view of Section 32 of the Evidence Act. PW1 also sustained very serious injuries. In Ext.P6 wound certificate in respect of PW1 the injury is noted as the incised injury 3 x 2 cm over right side of neck penetrating and muscle cutting. The cause of injury stated by him at the time of admission in the hospital is that `stab injury caused by Babu at about 10.25 p.m. today'. He was admitted in the hospital within half an hour at 10.45 p.m. and the above wound certificate was issued. The wound certificate in respect of deceased is Ext.P7. There also cause of inury was stated as `stab injury caused by Babu'. In 313 statement, the accused has stated that he had reached the shed where the victim and others were singing songs and began to beat the rhythm to the tune of the music. Then, PW1 Rajesh and his friends picked up quarrel with him. While so, Rajesh took a knife and waived against him. By chance it happened hit at the neck of Baby, PW1. Sustaining the injury Baby sat down. Again Rajesh waived the knife against the accused. The accused caught hold of it. Then Rajesh sustained stab injury on his plank with the knife he was holding. Counsel for the accused has taken a contention as self defence as well as insanity. Therefore, presence of the accused and involvement of the

accused are not denied. Apart from Ext.P3 dying declaration stated to have been made by the deceased, the prosecution case is proved by the oral evidence of PW1 who was an injured witness. There is nothing to disbelieve his evidence. The wound certificate issued to PW1 as well as deceased also corroborate the evidence of PW1. PW2 is an eye witness. He also narrated the incident as narrated by PW1, even though he has not seen the first incident of quarrel in the autorickshaw.

3. With regard to the plea of insanity, DW1 doctor was examined. He has stated that he has examined the accused in 2000 and at that time the accused was having signs of paranoid psychosis, but, there is no evidence to show that he was having paranoid psychosis before 17.6.2000. He also stated that poor sleep, indecent behavior and agitation are the symptoms of paranoid psychosis. In any event, there is no evidence that accused was having any mental illness at the time of the incident or before the incident. In the trial also he was very active and there was no sign to show that he was mentally ill during the period of trial. In 313 statement he has given very cogent answers. Therefore, plea of insanity cannot be pleaded in this case. There is no evidence to

show that he has any type of insanity or mental disease at the time of commission of the offence. In any event, defence failed to prove that the accused was not aware what was done by him so as to get the benefit of Section 84 I.P.C. In order to constitute legal insanity, unsoundness of mind must be such as to make the offender incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law as held by the Apex Court in **Amrit Bhushan** v. **Union of India** (AIR 1977 SC 608). There is no such evidence or circumstance in this case. In fact, presumption of motive militates against the plea of insanity.

4. The next question is whether the offence was committed for self defence. According to the counsel for the accused, deceased, PW1 and their friends were on the other side and the accused was alone and he also sustained injuries, but, injuries sustained by him are very minor and this can be caused while falling from the autorickshaw. Even otherwise, some resistance would have been taken by PW1 as well as deceased and that might have caused injuries on the accused. The victims were unarmed. The injuries caused to the accused as can be seen from Ext.P5 certificate is only tenderness on both sides of chest and pain on both sides of chest. MO1 knife was recovered on the basis of the confession given by the accused and chemical

examination report shows that it was blood stained. He has caused serious injuries to two persons. Even though PW1 escaped after two months of treatment and operation, the evidence and circumstances in this case will show that the appellant is not entitled to the benefit of private defence. Evidence shows that because of the earlier incident of pushing the accused from autorickshaw, he came there with the knife and has caused injuries to PW1 and the deceased.

In the above circumstances, we see no ground to differ from the findings of the Sessions Court. Only lesser punishment of life imprisonment was imposed under section 302 IPC. Hence, the appeal is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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